

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:97-cr-00036-03

MICHAEL LAMONT DUNCAN,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

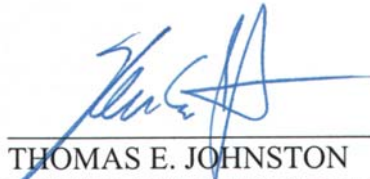
Pending before the Court is a motion [Docket 356], brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

The Court has received and considered the memorandum submitted by the Probation Office and the parties on this issue.

As noted by both parties, the Defendant is not serving a term of imprisonment which may be reduced under § 3582(c)(2) but is, instead, serving a term of imprisonment imposed for a supervised release violation; and, therefore, is ineligible for a sentence reduction. Accordingly, the § 3582 Motion [Docket 356] is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: July 13, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE